IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Misc. No. 21274-M of 2007

Date of Decision : November 14, 2007.

Fateh Singh and others .... Petitioners

Vs.

State of Punjab and another .... Respondents

CORAM : HON'BLE MR. JUSTICE L. N. MITTAL

* * *

Present : Mr.Ranjan Lakhanpal, Advocate
for the petitioners.

Mr. K.S.Pannu, AAG, Punjab
for respondent no.1.

Mr.G.S.Thind, Advocate
for respondent no.2.

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L.N.MITTAL, J. (Oral) :

Petitioner no.1 had lodged FIR No.32 dated 20.01.2005, under various Sections of IPC with Police Station Kotwali, District Patiala, against respondent no.2 and one Lakhvir Singh. In the same case, respondent no.2 gave his cross-version of the occurrence by making statement, on the basis of which, Report (Annexure P-1) was recorded in Daily Diary. The petitioners have been named as accused persons in the said cross version. After investigation, report under Section 173 of the

Code of Criminal Procedure (in short – the Code) has been presented against the petitioners for offences under Sections 323 and 427 read with Section 34 IPC. The petitioners have filed the instant petition under Section 482 of the Code for quashing of the impugned FIR (in fact, for quashing of cross version contained in Report Annexure P-1), along with all consequential proceedings.

The sole contention advanced by the learned counsel for the petitioners is that both offences under Section 323 and 427 IPC are non-cognizable offences and therefore, the petitioners cannot be prosecuted on the basis of police report. However, it is contended on behalf of respondents that initially, the cross-version was also for additional cognizable offences under Sections 356 and 148 IPC read with Section 149 IPC, but after investigation, the police presented challan under Sections 323 and 427 IPC only, which are non-cognizable offences. It is contended that in view of explanation to clause (d) of Section 2 of the Code, the challan presented by the police has to be treated as a complaint and the petitioners have nonetheless to be prosecuted accordingly. For proper appreciation, the aforesaid explanation is reproduced hereunder :-

> *"A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complaint;"*

In view of the aforesaid explanation, it is very explicit and manifest that the challan presented in the instant case against the petitioners by the police, which disclosed, after investigation, the commission of non-cognizable offences, has to be treated as a complaint and accordingly, the

petitioners have still to be prosecuted on the basis thereof.

In view of the aforesaid, there is no ground for quashing the prosecution of the petitioners on the basis of Report (Annexure P-1) and the consequent challan presented by the police against the petitioners.

Accordingly, the instant petition stands dismissed.

November 14, 2007 **(L.N.MITTAL)**
monika **JUDGE**